

In re patent application of:
Ralph T. Baker
USSN: 10/721,570
For: IMPROVED FIRE ESCAPE

REMARKS

I. The Abstract

The examiner reminds the applicant that legal phraseology should be removed from the abstract. Accordingly, in the amendment herein, the term "said" in line 16 of the abstract has been amended to --the--. A separate replacement abstract is submitted as a separate sheet.

The replacement abstract appears otherwise proper in form and phraseology.

II. Patentability of the Claims
as Currently Amended

Claims 23 and 25 have been cancelled, without prejudice, and the limitations of each have now been included as limitations in the independent claim 1 by amendment herein. Patentability of current dependent claims 2-22, 24 and 26-32 is conceded to depend upon patentability of claim 1, these dependent claims all being directed to preferred embodiments of the invention.

Accordingly, the rejections in the outstanding Office Action are deemed moot, except that it is anticipated that the references cited therein to Baker, Miller and Reece, as they were previously

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applied to old claims 1, 23 and 25, will be considered by Examiner Lev to be relevant to patentability of amended claim 1 herein. These references are discussed further below.

As now amended, claim 1 is directed to fire escape apparatus which includes an upper entry ring member, an elongate mesh tube, a lower exit-opening ring member, and a guide wire affixed to a ground anchor, wherein the mesh tube has a **plurality** of supporting blocks-and-pulleys affixed thereto at spaced-apart intervals, the pulleys engaging and riding upon the guide wire, and includes a longitudinal reinforcing cord affixed at both ends and **intertwining** the mesh tube along its length, wherein **at least two cords** of the mesh tube connect the tube to the reinforcing cord through **each** block of the several blocks-and-pulleys, thereby allowing safe egress by a person through the apparatus from a building structure.

With reference to the prior art of record, Baker discloses fire escape apparatus which includes upper and lower ring members connected to an elongate mesh tube, a guide wire affixed to a ground anchor, and including a "snap-on hook" or "snap-on ring".

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Baker does **not** disclose or suggest blocks and pulleys, nor a plurality of blocks and pulleys, spaced apart, nor a longitudinal reinforcing cord affixed at either end, nor this reinforcing cord intertwining the mesh tube along its length, nor at least two cords of the mesh tube connecting the tube to the reinforcing cord through each block of the several blocks and pulleys.

The patentee Baker is the applicant herein.

The reference of record to Miller discloses a device harness to provide means of descent from an elevated structure. (See, e.g., Miller, col. 1, line 55 et. seq.) Miller's device includes a single action hydraulic cylinder, used in connection with pulleys, to provide controlled descension through action of a plunger in the hydraulic cylinder. (Miller, col. 1, l. 67 to col. 2, l. 15.) While the existence of blocks-and-pulleys in this and other prior art is not disputed, the pulley system of Miller, described at col. 2, line 63 et seq. of Miller, bears no remote resemblance to the plurality of blocks-and-pulleys disclosed and claimed by applicant.

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Specifically, Miller nowhere discloses or suggests the plurality of spaced-apart blocks and pulleys of applicant's apparatus, nor the longitudinal reinforcing cord, nor this cord intertwining applicant's mesh tube, with at least two cords of the mesh tube connecting this tube to the reinforcing cord through each block of applicant's plurality of blocks and pulleys. In short, Miller, with or without Baker, provides none of these key components of applicant's invention.

In the present outstanding Office Action, the examiner rejected old claims 23-25, whose limitations are now in claim 1, as unpatentable over Baker in view of Miller, further in view of Reece. The examiner states:

...**Reece sets forth** the use of reinforcing cord members 40.

(O.A., p. 4,
emphasis in original)

However, Reece's component 40 is **not** a longitudinal cord; it is "a vertical support rib 40", of an undisclosed material (Reece, col. 3, line 16). Reece is, in fact, irrelevant to patentability of applicant's reinforced mesh chute fire escape. Still further, neither Reece, nor any other known reference, discloses or suggests applicant's reinforcing cord which **intertwines** the mesh escape tube along its length thereof.

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In summary, it is clear that **nowhere** in the references of record, in any combination, are the essential components of applicant's invention disclosed or remotely suggested.

In *Ecolochem, Inc. v. Southern California Edison Company*, 227 F.3d 1361; 56 USPQ 2d 1065 (Federal Circuit, 2000), the Federal Circuit stated:

We "cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." [omitting cases]

. . .
Our case law makes clear that the best defense against hindsight-based obviousness analysis is the rigorous application of the requirement for a **showing** of a teaching or motivation to combine the prior art references [omitting cases]

(p. 1372, emphasis added)

In *In re Lee*, 277 F.3d 1338, 61 USPQ2d 1430 (Fed. Cir. 2002), the sole issue, as here, was one of "obviousness". In *Lee*, the Board of Patent Appeals and Interferences had held that "...a specific hint or suggestion of motivation to combine [the references] was not required" to decide the issue. *Id.*, 1343. The Federal Circuit disagreed, and vacated that Board's decision saying:

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For judicial review to be meaningfully achieved within these strictures, the agency tribunal must present a full and reasoned explanation of its decision.

...

This standard requires that the agency not only have reached a sound decision, but have articulated the reasons for that decision.

(P. 1342)

"The factual inquiry whether to combine references must be thorough and searching." Id. It must be based on objective evidence of record. This precedent has been reinforced in myriad decisions, and cannot be dispensed with.

(P. 1343)

The need for specificity pervades this authority.

...

It is improper, in determining whether a person of ordinary skill would have been led to this combination of references, simply to "[use] that which the inventor taught against its teacher." W. L. Gore v. Garlock, Inc., 721 F2d 1540, 1553, 220 U.S.P.Q. (BNA) 303, 312-13 (Fed. Cir. 1983). Thus the Board [and examiners] must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion.

...

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In its decision on Lee's patent application, the Board rejected the need for "any specific hint or suggestion in a particular reference" to support the combination of...references. Omission of a relevant factor required by precedent is both legal error and arbitrary agency action.

...

The "common knowledge and common sense" on which the Board relied in rejecting Lee's application are not the specialized knowledge and expertise contemplated by the Administrative Procedure Act. Conclusory statements such as those here provided do not fulfill the agency's obligation.

...

"Common knowledge and common sense," even if assumed to derive from the agency's expertise, do not substitute for authority when the law requires authority.

(P. 1344)

Here, the law requires authority.

The examiner concludes in the Office Action that applicant has merely provided a "duplication of parts", that it is "not inventive to discover the optimum or workable values", and that what applicant has invented is a "matter of design choice". To the contrary, nonduplication of parts, providing engineering advantages, or producing unexpected results have **never** been criteria required **for** patentability. They merely provide evidence

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to use in deciding the issue. **Novelty and nonobviousness** are what are required **for** patentability. What **is** required **to deny** patentability is a suggestion, teaching or motivation apparent in the references of record to combine them to achieve applicant's invention. No such suggestions or specific citations to the current record exist here. That is legal error. *Ecolochem, Lee, supra*.

In support of an obviousness rejection, knowledge "clearly present in the prior art" must be shown. *In re Sheckler*, 438 F.2d 999, 168 U.S.P.Q. 716 (CCPA 1971); *In re Sernaker*, 217 U.S.P.Q. 1, 6 (Fed. Cir. 1983). The Court in *Sernaker, supra*, said:

The lesson of this case appears to be that prior art references in combination do not make an invention obvious unless something in the prior art references would suggest the advantage to be derived from their teachings.

(*Sernaker*, p. 6)

As set forth hereinabove, applicant's invention presents far more than a duplication of parts of his prior invention. Moreover, there is no disclosure or remote suggestion in the references of record of applicant's invention **as claimed**, including a plurality of blocks-and-pulleys installed at defined, spaced-apart intervals along the guide wire and including the longitudinal reinforcing

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cord intertwining the mesh, and wherein at least two cords of the mesh tube connect the tube to the reinforcing cord through each block of the plurality of blocks and pulleys. As claimed, applicant's invention is patentable over the art of record.

III. Conclusion

Under the facts of this case and the law, all of applicant's amended claims 1-22, 24 and 26-32 are allowable. Allowance is urged.

Respectfully submitted,

E. ALAN UEBLER, P.A.



E. Alan Uebler, Reg. No. 26,594
Attorney for Applicant
Lindell Square, Suite 4
1601 Milltown Road
Wilmington, DE 19808
(302) 998-9400

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